

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Broadcasters Association, *et al.*,
Plaintiffs,
v.
Kris Mayes, *et al.*,
Defendants.

No. CV-22-01431-PHX-JJT

**ORDER FOR PERMANENT
INJUNCTION AND DECLARATORY
JUDGMENT; DEFAULT
JUDGMENT AS TO COUNTY
DEFENDANTS**

At issue are Plaintiffs' Motion for Judgment on the Pleadings against Defendant Kristin K. Mayes, in her official capacity as Attorney General for the State of Arizona (Doc. 54), and Plaintiffs' Motion for Default Judgment against Defendants Rachel Mitchell, in her official capacity as Maricopa County Attorney, and Paul Penzone, in his official capacity as Maricopa County Sheriff (Doc. 56). Defendants have not challenged this lawsuit on the merits. Defendants Mitchell and Penzone took no position on the merits and default was entered against them. (Doc. 55.) Defendant Mayes and Plaintiffs filed a Stipulation Regarding Entry of Permanent Injunction and Declaratory Judgment (Doc. 66).

Pursuant to the Stipulation filed by Plaintiffs and Defendant Mayes and for good cause shown, and for the reasons set forth on the record at the hearing on Plaintiffs' request for a Preliminary Injunction, which this Court will treat as a trial on the merits under Federal Rule of Civil Procedure 65(a)(2), and for the reasons set forth in Plaintiffs' Complaint, Motion for Preliminary Injunction, and Motion for Default Judgment,¹

¹ Having defaulted, Defendants Mitchell and Penzone did not join in the Stipulation filed by Plaintiffs and Defendant Mayes. The Court finds the *Eitel v. McCool* factors support the

IT IS ORDERED as follows:

1. This Court has jurisdiction over this matter under Article III § 2 of the United States Constitution and 28 U.S.C. §§ 1331 and 1343.
2. A.R.S. § 13-3732 is declared unconstitutional as a violation of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, because:
 - a. there is a clearly established right to record law enforcement officers engaged in the exercise of their official duties in public places, *see e.g., Askins v. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018);
 - b. the statute imposes a content-based restriction that is subject to strict scrutiny as it “singles out specific subject matter”—recordings of law enforcement activities—“for differential treatment,” *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015); and
 - c. the statute does not survive strict scrutiny because it is not narrowly tailored or necessary to prevent interference with police officers given other Arizona laws in effect.
3. A.R.S. § 13-3732 is declared unconstitutional as a violation of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, because:
 - a. the statute is not a reasonable “time place and manner” restriction, *see Hill v. Colorado*, 530 U.S. 703, 713 (2000); and
 - b. the statute cannot withstand intermediate scrutiny because the law prohibits or chills a substantial amount of First Amendment protected activity and is unnecessary to prevent interference with police officers given other Arizona laws in effect.

entry of default judgment against them. 782 F.2d 1470, 1471–72 (9th Cir. 1986).


5. This Court shall retain jurisdiction over this action for the purposes of construction, modification, and enforcement of this Order.

IT IS FURTHER ORDERED granting the Stipulation Regarding Entry of Permanent Injunction and Declaratory Judgment (Doc. 66).

IT IS FURTHER ORDERED denying as moot Plaintiffs’ Motion for Judgment on the Pleadings against Defendant Kristin K. Mayes, in her official capacity as Attorney General for the State of Arizona (Doc. 54).

IT IS FURTHER ORDERED directing the Clerk to close this matter.

Dated this 21st day of July, 2023.

23. 
Honorable John J. Tuchi
United States District Judge